

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Vlazny et al.

Serial No.: 10/690,474

Filed: October 21, 2003

For: METHODS OF PARI-MUTUEL
WAGERING BASED UPON FIXED ODDS
AND/OR SHARE PURCHASE

Confirmation No.: 3841

Examiner: J. Anderson

Group Art Unit: 3696

Attorney Docket No.: 3127-6059US

**VIA ELECTRONIC FILING
December 8, 2008**

APPEAL BRIEF

Mail Stop Appeal Brief – Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sirs:

This brief is submitted in the format required under 37 C.F.R. § 41.37(c). The \$500.00 fee under 37 C.F.R. § 41.20(b)(2) for filing a brief in support of an appeal is submitted concurrently herewith, with a request for a two-month extension of time with appropriate fee.

1) REAL PARTY IN INTEREST

The real party in interest in the present pending appeal is United Tote Company, Assignee of the pending application as recorded with the United States Patent and Trademark Office on March 15, 2004, at Reel 015815, Frame 0728.

2) RELATED APPEALS AND INTERFERENCES

The Appellant, the Appellant's representative, and the Assignee are not aware of any pending appeal or interference that would relate to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

3) STATUS OF THE CLAIMS

Claims 1 through 26 are pending in the application.

Claims 1 through 26 stand rejected.

No claims are allowed.

Claims 1 through 26 are the subject of the pending appeal.

4) STATUS OF AMENDMENTS

No amendments were proposed in the present application subsequent the final rejection mailed April 4, 2008.

5) SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 1 of the presently claimed invention is directed to a method of playing a pari-mutuel wagering game. With reference to FIGS. 1 through 4 of the presently considered application, the method recited in claim 1 includes identifying a plurality of potential outcomes for an event and affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted. *As-filed Application* at page 8, ¶ [0031]; page 9, ¶ [0036]. A pari-mutuel wagering pool is formed having funds comprised of all wagers placed with an amount of each game participant's wager and the specified odds level accepted for each wager recorded. *Id.* at pages 10-11, ¶¶ [0039]-[0043].

At least one of the plurality of potential outcomes is identified as a winning outcome for the event. *Id.* at page 8, ¶ [0031]; page 11, ¶ [0044]. All game participants of the plurality of game participants that placed a wager on the winning outcome are identified as winning game participants, and an appropriate payout to each winning game participant is distribute from the pari-mutuel wagering pool. *Id.* at pages 11-12, ¶¶ [0044]-[0046].

Independent claim 17 of the presently claimed invention is directed to a method of playing a pari-mutuel wagering game. With reference to FIGS. 1 through 4 of the presently considered application, the method recited in claim 17 includes placing a wager on at least one outcome of a plurality of potential outcomes for an event, the wager being placed in a pari-mutuel wagering pool. *Id.* at page 8, ¶ [0031]; page 9, ¶ [0036]. At the time the wager is placed, the odds at which the wager is accepted is specified. *Id.* If the at least one outcome is a winning outcome, an appropriate payout is received. *Id.* at pages 11-12, ¶¶ [0044]-[0046].

Independent claim 20 of the presently claimed invention is directed to a method of playing a pari-mutuel wagering game. With reference to FIG. 13 of the presently considered application, the method recited in claim 20 includes identifying a plurality of potential outcomes of an event and setting an initial share price for each of the plurality of potential outcomes. *Id.* at page 20, ¶ [0068]; pages 21-22, ¶¶ [0070]-[0076].

A plurality of game participants are afforded an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes at the initial share price. *Id.* at page 20, ¶ [0068]; page 22, ¶ [0077]. An adjusted share price for each of the plurality of potential outcomes is determined and the plurality of game participants are afforded an opportunity to purchase at least one share in favor of the at least one outcome of the plurality of potential outcomes at the adjusted share price. *Id.* at page 20, ¶ [0068]; pages 21-22, ¶ [0070]-[0077].

A pari-mutuel wagering pool is formed comprising funds received for each share purchased by game participants. *Id.* at page 23, ¶ [0079]. At least one winning outcome is identified from the plurality of potential outcomes for the event and an appropriate payout to each game participant that purchased at least one share in favor of the winning outcome is distributed from the pari-mutuel wagering pool. *Id.*

Independent claim 25 of the presently claimed invention is directed to a method of playing a pari-mutuel wagering game. With reference to FIG. 13 of the presently considered application, the method recited in claim 25 includes purchasing at least one share in favor of a particular outcome of a plurality of potential outcomes for an event at a share price, the funds for each share purchased being placed in a pari-mutuel wagering pool. *Id.* at pages 20-23, ¶¶ [0068]-

[0079]. If the particular outcome in favor of which the at least one share was purchased is a winning outcome, an appropriate payout is received. *Id.*

6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(A) Claims 1 through 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hart et al. (U.S. Patent Publication No. 2007/0087825) in view of Downes (U.S. Patent Publication No. 2003/0199315).

(B) Claims 17 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hart et al. (U.S. Patent Publication No. 2007/0087825) in view of Aronson (U.S. Patent No. 6,695,701).

(C) Claims 20 through 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aronson (U.S. Patent No. 6,695,701) in view of Byrne (U.S. Patent Publication No. 2003/0078090).

(D) Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hart et al. (U.S. Patent Publication No. 2007/0087825) in view of Byrne (U.S. Patent Publication No. 2003/0078090).

7) ARGUMENT

STANDARD OF PATENTABILITY UNDER 35 U.S.C. § 103(a)

Rejection of claims under 35 U.S.C. § 103(a) requires that the U.S. Patent and Trademark Office (the “Office”) must first establish a *prima facie* case of obviousness. M.P.E.P. § 2142. To establish a *prima facie* case of obviousness the prior art reference (or references when

combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be “a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Appellants’ disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Indeed, underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

In view of these standards and the arguments set forth below, Appellant respectfully submits that the Office has not established a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

A.1 PATENTABILITY OF CLAIMS 1 THROUGH 16

In an Office Action mailed April 4, 2008, and made Final (hereinafter “the Final Action”), the Examiner rejected claims 1 through 16 under 35 U.S.C. 103(a) as being unpatentable over Hart et al. (U.S. Patent Publication No. 2007/0087825) in view of Downes (U.S. Patent Publication No. 2003/0199315).

Independent claim 1 is directed to a method of playing a pari-mutuel wagering game.

The method comprises: identifying a plurality of potential outcomes for an event; affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted; forming a pari-mutuel wagering pool having funds comprised of all wagers placed; recording an amount of each game participant's wager and the specified odds level accepted for each wager; identifying at least one of the plurality of potential outcomes as a winning outcome for the event; identifying all game participants of the plurality of game participants that placed a wager on the winning outcome as winning game participants; and distributing, from the pari-mutuel wagering pool, an appropriate payout to each winning game participant.

In rejecting claim 1, the Examiner cites Hart as describing "systems and methods for providing a user with the ability to submit a wager to a fixed-odds book or a pari-mutuel pool using an interactive wagering application" wherein "the player selects one horse and such horse has to cross the finish line either first, second or third for the player to win." *Final Action* at page 3. Additionally, the Examiner notes that Hart describes multiple pools wherein the "odds of winning the second pool are less than the first pool." *Id.* The Examiner states that, according to Hart, "if a player is successful in its selections such that the order of indicia based on the order of finish of the competitors in the virtual race is the same as the positions of finish selected by the player, such player will win." *Id.* at pages 3-4. Finally, the Examiner cites Hart as describing that "a share of the first pool proportionate to the wagers made on the first wager type is distributed to

each of the players in the first and second group if the selected position of finish by the players in the first or second group is the same as the order of indicia.” *Id.* at page 4.

The Examiner acknowledges that Hart does not specifically describe recording the participant’s wager, but cites Downes as describing such subject matter. The Examiner then states that “it would have been obvious to a person of ordinary skill in the art at the time of [sic] the invention was made to utilize the teachings of Downes in the device of Hart” wherein the motivation for doing so “would be to have the ability to separate a portion of the amounts wagered in the various betting pools and calculate approximate odd and payouts.” *Id.*

The 35 U.S.C. § 103(a) obviousness rejections of claims 1 through 16 are improper because the references relied on by the Examiner fail to teach or suggest all of the limitations of the presently claimed invention. In particular, the references relied on fail to teach or suggest at least “affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes *and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted,*” as recited in independent claim 1.

Hart et al. is directed to a pari-mutuel wagering system including a “real time virtual horse racing game” wherein the outcome of the race is determined by a random number generator such that “each competitor has a statistically equal chance of winning.” *Hart et al.* at Abstract. Different types of wagers are allowed from players including, for example, “Pick 1,” where a player must select one competitor who must finish first in the virtual race,” “Pick 2, ” where a player must select two competitors and their order of finish in the virtual race, etc. The system includes having a specific pool for each wager type (Pick 1, Pick 2, Pick 3, etc.) comprising a portion of all wagers made for that wager type. For example, “the pool for the Pick 1 wager type

110 is comprised of a predetermined portion of all wagers made for the Pick 1 wager type; the pool for the Pick 2 wager type 115 is comprised of a predetermined portion of all wagers made for the Pick 2 wager type” and so on. *Id.* at ¶ [0050]. “Furthermore, to encourage players to make wagers on Pick 6 (because the odds of winning are lower than the other wager types), an additional predetermined portion of all wagers made for each of Pick 1, Pick 2, Pick 3, Pick 4 and Pick 5 wager types is redistributed into the pool for the Pick 6 wager type.” *Id.* at ¶ [0051].

Downes describes a pari-mutuel sports wagering system where wagers are placed on “the performance statistics of individual sport or event participants, combinations of sport participants, combinations of event participants, and sport teams.” *Downes* at Abstract. The system in Downes includes a wagering system host 10 as the core processing element in the wagering game system. *Id.* at ¶ [0051]. The wagering system host handles the processing functions associated with bettors’ wagering accounts including game accounting, wager accounting, odds determination, winning wager determination, payout determination, system security, access permission and performance statistics accounting. *Id.*

Neither Hart et al. nor Downes teach or suggest affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes *and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted*. In Hart et al., the odds levels are fixed according to the “Pick” selected by the game participants. For example, the game participants cannot place a wager on a potential outcome (e.g., horse 1 will win) and specify an odds level at which the wager is accepted.

The Examiner appears to agree with the Applications that Hart et al. fails to teach such limitations, and relied on Downes in the Response to Arguments. *See Final Action* at pages 26-

27. However, Downes also clearly fails to teach or suggest such limitations. In Downes, the wagering system includes a wagering system host 10 comprising “a conventional microprocessor based system and/or server.” *Downes* at ¶ [0029]. It is this host 10 which calculates and determines the odds, and Downes specifically states that “[p]ayout odds are determined by the amounts in the betting pools after taking the house pool deduction in account.” *Id.* at ¶¶ [0051], [0075], [0077], [0080]. Thus, Appellants assert that the game participants in Downes are unable to specify an odds level since the odds levels are only determined *after* all bets are placed. The game participants may examine the odds in Downes, but they are unable to specify an odds level. *Id.* at ¶¶ [0097]-[0104].

Thus, Hart et al. and Downes, when combined, fail at least to teach or suggest “affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes *and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted*,” as recited in independent claim 1. Appellants, therefore, assert that the Examiner has failed to present a *prima facie* case of obviousness based on the combination of Hart et al. and Downes, and that claim 1 is in condition for allowance.

Appellants further submit that claims 2 through 16 are allowable at least by virtue of their dependency from an allowable base claim.

With respect to claims 3 through 16, Appellants submit that Hart et al. and Downes fail to teach or suggest determining whether the funds in the pari-mutuel wagering pool are sufficient to return to each winning game participant the amount of that game participant’s wager and to pay odds on each winning game participant’s wager at the specified odds level accepted for each wager.

With respect to claim 4, Appellants submit that Hart et al. and Downes fail to teach or suggest, if it is determined that the funds in the pari-mutuel wagering pool are sufficient, distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

With respect to claim 5, Appellants submit that Hart et al. and Downes fail to teach or suggest, if it is determined that the funds in the pari-mutuel wagering pool are not sufficient, the method further comprises determining the cumulative amounts necessary to pay odds on each wager placed by a winning game participant at each odds level of the plurality of progressive odds levels and to pay odds on each wager placed by a winning game participant at an odds levels below each odds level of the plurality of progressive odds levels.

With respect to claim 6, Appellants submit that Hart et al. and Downes fail to teach or suggest determining a max odds payout at a particular odds level at which the funds in the pari-mutuel wagering pool are sufficient to pay odds on all wagers placed by the winning game participants at the particular odds level and to pay odds on all wagers placed by the winning game participants at odds levels of the plurality of progressive odds levels that are below the particular odds level.

With respect to claim 7, Appellants submit that Hart et al. and Downes fail to teach or suggest that distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.

With respect to claim 8, Appellants submit that Hart and Downes fail to teach or suggest determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

With respect to claim 9, Appellants submit that Hart et al. and Downes fail to teach or suggest, if there is a surplus of the funds in the pari-mutuel wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to all the winning game participants, which share is proportional to each winning game participant's wager.

With respect to claim 10, Appellants submit that Hart et al. and Downes fail to teach or suggest determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level below the max odds payout.

With respect to claim 11, Appellants submit that Hart et al. and Downes fail to teach or suggest, if there is a surplus of the funds in the pari-mutuel wagering pool, that distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to at least a subset of the winning game participants, which share is proportional to each winning game participant's wager.

With respect to claim 12, Appellants submit that Hart et al. and Downes fail to teach or suggest distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants.

With respect to claim 13, Appellants submit that Hart et al. and Downes fail to teach or suggest that distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants that placed a wager at the max odds payout.

With respect to claim 14, Appellants submit that Hart et al. and Downes fail to teach or suggest that distributing a share of the surplus of funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all winning game participants that placed a wager at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.

A.2 PATENTABILITY OF CLAIMS 17 THROUGH 19

In the Final Action, the Examiner rejected claims 17 through 19 under 35 U.S.C. 103(a) as being unpatentable over Hart et al. (U.S. Patent Publication No. 2007/0087825) in view of Aronson (U.S. Patent No. 6,695,701). Appellants respectfully traverse this rejection.

Independent claim 17 is directed to a method of playing a pari-mutuel wagering game. The method comprises: placing a wager on at least one outcome of a plurality of potential outcomes for an event, the wager being placed in a pari-mutuel wagering pool; *specifying, at the time the wager is placed, odds at which the wager is accepted*; and if the at least one outcome is a winning outcome, receiving an appropriate payout.

The Examiner relies on Hart et al. in the same manner as applied to claim 1 and as discussed hereinabove in section 7(A.1). *See Final Action* at page 12. The Examiner then relies on Aronson as “disclos[ing] totalisators as computer systems that may be used to handle pari-mutuel wagers made at the racetracks, made at off track betting establishments.” *Id.* The Examiner further states that, as described by Aronson, totalisators “generate wagering odds in real time” and, further, “generate these odds based on information on which wagers are being placed.” *Id.* The Examiner concludes that it “would have been obvious to a person of ordinary skill in the art at the time of [sic] the invention was made to utilize the teachings of Aronson in the device of Hart to use the device in pari-mutuel wagering.” *Id.*

The 35 U.S.C. § 103(a) obviousness rejections of claims 17 through 19 are improper because the references relied on by the Examiner fail to teach or suggest all of the limitations of the presently claimed invention. In particular, the references relied on fail to teach or suggest at least “specifying, at the time the wager is placed, odds at which the wager is accepted,” as recited in independent claim 17.

The teachings of Hart et al. are set forth hereinabove in section 7(A.1) with respect to the Examiner’s rejection of claim 1. As set forth herein above, Hart et al. fails to teach or suggest anything about specifying odds at which the wager is accepted. Furthermore, Aronson describes a system and method of providing a user with the ability to submit a wager to a fixed-odds book or a pari-mutuel pool using an interactive wagering application. The system includes providing the user with a conditional wagering option where, for example, if a wager placed with a fixed-odds book is refused, the wager may be automatically placed with a pari-mutuel pool. *See, e.g., Aronson* at Abstract; col. 21, line 10 – col. 22, line 15. Aronson describes that racing data may

be provided from totalisators 30, which are described as computer systems used to handle pari-mutuel wagers. The totalisators 30 may generate wagering odds in real time based on information on which wagers are being placed. *Id.* at col. 7, lines 32-36.

Although Aronson describes these totalisators 30 as generating wagering odds in real time, Aronson does not teach or suggest that the wagering odds generated in real time are the odds at which a wager is accepted. Indeed, there is no teaching or suggestion in Aronson that the totalisators 30 do anything different from conventional pari-mutuel wagering pools in which the actual odds change as money wagered on the event is added to the wagering pool and wagers are placed on the various potential outcomes. Appellants assert that merely updating the wagering odds in real time, but providing the same final odds to all participants is substantially different from “specifying, at the time the wager is placed, odds at which the wager is accepted.” Indeed, Aronson gives an example with reference to FIG. 13 describing that a wager may be submitted to a fixed-odds book where the odds will not change but where there is a chance that the wager will not be accepted, or a wager may be submitted to a pari-mutuel pool where the wager will most likely be accepted, *but the odds may change*. *Id.* at col. 18, lines 47-55. Thus, Aronson teaches that although pari-mutuel wagering odds may be updated in real time, the odds at which a wager is *accepted* is not specified until the wagering pool is closed as opposed to the time the wager is placed.

Thus, Hart et al. and Aronson, when combined, fail at least to teach or suggest “specifying, at the time the wager is placed, odds at which the wager is accepted,” as recited in independent claim 17. Appellants, therefore, assert that the Examiner has failed to present a

prima facie case of obviousness based on the combination of Hart et al. and Aronson, and that claim 17 is in condition for allowance.

Appellants further submit that claims 18 and 19 are allowable at least by virtue of their dependency from an allowable base claim.

With respect to claim 18, Appellants submits that Hart and Aronson fail to teach or suggest that receiving an appropriate payout comprises receiving a return of the wager; and *if the pari-mutuel wagering pool contains sufficient funds, receiving odds on the wager at the odds at which the wager was accepted.*

With respect to claim 19, Appellants submits that Hart and Aronson fail to teach or suggest that receiving an appropriate payout further comprises *receiving a share of a surplus of funds* from the pari-mutuel wagering pool, which share is proportional to the wager.

A.3 PATENTABILITY OF CLAIMS 20 THROUGH 24

In the Final Action, the Examiner rejected claims 20 through 24 under 35 U.S.C. 103(a) as being unpatentable over Aronson (U.S. Patent No. 6,695,701) in view of Byrne (U.S. Patent Publication No. 2003/0078090).

Independent claim 20 is directed to a method of playing a pari-mutuel wagering game. The method comprises: identifying a plurality of potential outcomes for an event; setting an initial share price *for each of the plurality of potential outcomes*; affording a plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes at the initial share price; *determining an adjusted share price for each of the plurality of potential outcomes*; affording the plurality of game participants an

opportunity to purchase at least one share in favor of the at least one outcome of the plurality of potential outcomes *at the adjusted share price*; forming a pari-mutuel wagering pool comprising funds received for each share purchased; identifying at least one winning outcome from the plurality of potential outcomes for the event; and distributing, from the pari-mutuel wagering pool, an appropriate payout to each game participant that purchased at least one share in favor of the winning outcome.

The Examiner cites Aronson as disclosing a totilisor as discussed above in section 7(A.2) with respect to the rejection of claim 17. The Examiner then cites Byrne, stating that “[i]n its broadest sense, the invention includes in a gambling game where there may be a number of events elected ones of which can lead to a winning result.” *Final Action* at page 19. The Examiner further states that, according to Byrne, all players who had selected that result type are paid a share of the available amount for that result type and that the “payment depends on the amount invested by the individual player and the total amount invented by the players in the collateral game since there has been a winning result.” *Id.* The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made, “to utilize the teachings of Byrne in the device of Aronson to provide a collateral game where players may take a second entry when they are playing a game,” the motivation being “to encourage multi game multi ticket play at not extra overhead cost.” *Id.* at page 20.

The teachings of Aronson are described hereinabove in section 7(A.2) with respect to the Examiner’s rejection of claim 17. Byrne describes a “Super Keno” game wherein an additional bet is placed in conjunction with a standard Keno game. *See, e.g., Byrne* at ¶ [0013]. In one embodiment, if a player wishes to participate in Super Keno, they pay to participate in a

predetermined number (e.g., 5) of standard Keno games and then pay an additional fee to enter the Super Keno game. The additional fee goes into a Super Keno jackpot. A “share” of the Super Keno jackpot is won by all players entered into the Super Keno game if any of the players playing the Super Keno game win the Super Keno game. See *Id.*, ¶ [0015] - [0017].

While Byrne discloses the “sharing” of a jackpot or pool among a variety of participants based on the outcome of a particular game, the Examiner has not cited any specific teaching or suggestion in either Aronson or Byrne, of a method that includes: setting an initial share price *for each of the plurality of potential outcomes*; affording a plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes *at the initial share price*; determining *an adjusted share price for each of the plurality of potential outcomes*; and affording the plurality of game participants an opportunity to purchase at least one share in favor of the at least one outcome of the plurality of potential outcomes *at the adjusted share price*.

Thus, Aronson and Byrne, when combined, fail at least to teach or suggest “setting an initial share price *for each of the plurality of potential outcomes*; affording a plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes *at the initial share price*; determining *an adjusted share price for each of the plurality of potential outcomes*; and affording the plurality of game participants an opportunity to purchase at least one share in favor of the at least one outcome of the plurality of potential outcomes *at the adjusted share price*,” as recited in independent claim 20. Appellants, therefore, assert that the Examiner has failed to present a *prima facie* case of obviousness based on the combination of Aronson and Byrne, and that claim 20 is in condition for allowance.

Appellants further submit that claims 21 through 24 are allowable at least by virtue of their dependency from an allowable base claim.

A.4 PATENTABILITY OF CLAIMS 25 AND 26

In the Final Action, the Examiner rejected claims 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over Hart et al. (U.S. Patent Publication No. 2007/0087825) in view of Byrne (U.S. Patent Publication No. 2003/0078090).

Claim 25 is directed to a method of playing a pari-mutuel wagering game. The method comprises: *purchasing at least one share* in favor of a particular outcome of a plurality of potential outcomes for an event *at a share price, funds for each share purchased being placed in a pari-mutuel wagering pool*; and if the particular outcome in favor of which the at least one share was purchased is a winning outcome, receiving an appropriate payout.

The Examiner relies on Hart et al. and Byrne as have been applied to other claims discussed hereinabove in sections 7(A.1) and 7(A.3). *Final Action* at page 24. The Examiner then states that it would have been obvious to a person of ordinary skill in the art at the time the invention was made “to utilize the teachings of Byrne in the device of Hart et al. to make appropriate payouts based on a winning outcome and total shares purchased” and that motivation to do so “would be to add excitement and interest for the players and to increase revenue for the jackpot.” *Id.* at page 25.

The teachings of Hart et al. and Byrne are each discussed hereinabove in sections 7(A.1) and 7(A.3). While Byrne discloses the “sharing” of a jackpot or pool among a variety of participants based on the outcome of a particular game, the Examiner has not cited any specific

teaching or suggestion in either Hart et al. or Byrne, of a method that includes *purchasing at least one share* in favor of a particular outcome of a plurality of potential outcomes for an event *at a share price, funds for each share purchased being placed in a pari-mutuel wagering pool.*

Thus, Hart et al. and Byrne, when combined, fail at least to teach or suggest “*purchasing at least one share* in favor of a particular outcome of a plurality of potential outcomes for an event *at a share price, funds for each share purchased being placed in a pari-mutuel wagering pool,*” as recited in independent claim 25. Appellants, therefore, assert that the Examiner has failed to present a *prima facie* case of obviousness based on the combination of Aronson and Byrne, and that claim 25 is in condition for allowance.

Appellants further submit that claim 26 is allowable at least by virtue of its dependency from an allowable base claim.

8) CLAIMS APPENDIX

A copy of claims 1 through 63 is appended hereto as “Appendix A.”

9) EVIDENCE APPENDIX

No evidence appendix is included herewith.

10) RELATED PROCEEDINGS APPENDIX

No related proceedings appendix is included herewith.

CONCLUSION

Appellants respectfully submit that claims 1 through 26 are allowable over the cited references of record. Appellant respectfully requests that the rejections of claims 1 through 26 under 35 U.S.C. § 103(a) be reversed.

Respectfully submitted,



Tyler J. Barrett
Registration No. 57,768
Attorney for Appellants(s)
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

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APPENDIX A

Claims 1-26

U.S. Patent Application No. 10/690,474

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1. A method of playing a pari-mutuel wagering game, comprising:
identifying a plurality of potential outcomes for an event;
affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted;
forming a pari-mutuel wagering pool having funds comprised of all wagers placed;
recording an amount of each game participant's wager and the specified odds level accepted for each wager;
identifying at least one of the plurality of potential outcomes as a winning outcome for the event;
identifying all game participants of the plurality of game participants that placed a wager on the winning outcome as winning game participants; and
distributing, from the pari-mutuel wagering pool, an appropriate payout to each winning game participant.

2. The method of claim 1, wherein distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager.

3. The method of claim 1, further comprising determining whether the funds in the pari-mutuel wagering pool are sufficient to return to each winning game participant the amount of that game participant's wager and to pay odds on each winning game participant's wager at the specified odds level accepted for each wager.

4. The method of claim 3, wherein if it is determined that the funds in the pari-mutuel wagering pool are sufficient, distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

5. The method of claim 3, wherein if it is determined that the funds in the pari-mutuel wagering pool are not sufficient, the method further comprises determining the cumulative amounts necessary to pay odds on each wager placed by a winning game participant at each odds level of the plurality of progressive odds levels and to pay odds on each wager placed by a winning game participant at an odds levels below each odds level of the plurality of progressive odds levels.

6. The method of claim 5, further comprising determining a max odds payout at a particular odds level at which the funds in the pari-mutuel wagering pool are sufficient to pay odds on all wagers placed by the winning game participants at the particular odds level and to pay odds on all wagers placed by the winning game participants at odds levels of the plurality of progressive odds levels that are below the particular odds level.

7. The method of claim 6, wherein distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.

8. The method of claim 4, further comprising determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

9. The method of claim 8, wherein if there is a surplus of the funds in the pari-mutuel wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to all the winning game participants, which share is proportional to each winning game participant's wager.

10. The method of claim 7, further comprising determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level below the max odds payout.

11. The method of claim 10, wherein if there is a surplus of the funds in the pari-mutuel wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to at least a subset of the winning game participants, which share is proportional to each winning game participant's wager.

12. The method of claim 11, wherein distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants.

13. The method of claim 11, wherein distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants that placed a wager at the max odds payout.

14. The method of claim 11, wherein distributing a share of the surplus of funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all winning game participants that placed a wager at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.

15. The method of claim 4, further comprising subtracting a takeout share from the pari-mutuel wagering pool prior to distributing an appropriate payout to each winning game participant.

16. The method of claim 7, further comprising subtracting a takeout share from the pari-mutuel wagering pool prior to distributing an appropriate payout to each winning game participant.

17. A method of playing a pari-mutuel wagering game, comprising:
placing a wager on at least one outcome of a plurality of potential outcomes for an event, the
wager being placed in a pari-mutuel wagering pool;
specifying, at the time the wager is placed, odds at which the wager is accepted; and
if the at least one outcome is a winning outcome, receiving an appropriate payout.

18. The method of claim 17, wherein receiving an appropriate payout comprises:
receiving a return of the wager; and
if the pari-mutuel wagering pool contains sufficient funds, receiving odds on the wager at the
odds at which the wager was accepted.

19. The method of claim 18, wherein receiving an appropriate payout further
comprises receiving a share of a surplus of funds from the pari-mutuel wagering pool, which
share is proportional to the wager.

20. A method of playing a pari-mutuel wagering game, comprising:
identifying a plurality of potential outcomes for an event;
setting an initial share price for each of the plurality of potential outcomes;
affording a plurality of game participants an opportunity to purchase at least one share in favor of
at least one outcome of the plurality of potential outcomes at the initial share price;
determining an adjusted share price for each of the plurality of potential outcomes;
affording the plurality of game participants an opportunity to purchase at least one share in favor
of the at least one outcome of the plurality of potential outcomes at the adjusted share
price;
forming a pari-mutuel wagering pool comprising funds received for each share purchased;
identifying at least one winning outcome from the plurality of potential outcomes for the event;
and
distributing, from the pari-mutuel wagering pool, an appropriate payout to each game participant
that purchased at least one share in favor of the winning outcome.

21. The method of claim 20, wherein distributing an appropriate payout to each game participant that purchased at least one share in favor of the at least one winning outcome comprises distributing to each game participant that purchased at least one share in favor of the at least one winning outcome funds equivalent to the share price at which each share in favor of the at least one winning outcome was purchased.

22. The method of claim 20, further comprising:
determining a total number of shares purchased in favor of the at least one winning outcome; and
determining a total value of the funds comprising the pari-mutuel wagering pool.

23. The method of claim 22, further comprising determining a dividend value for each share purchased in favor of the at least one winning outcome by dividing the total value of the funds comprising the pari-mutuel wagering pool by the total number of shares purchased in favor of the at least one winning outcome.

24. The method of claim 23, wherein distributing an appropriate payout to each game participant that purchased at least one share in favor of the winning outcome comprises distributing to each game participant that purchased at least one share in favor of the winning outcome, funds equivalent to the share price at which each share in favor of the winning outcome was purchased and the dividend value for each such share purchased in favor of the winning outcome.

25. A method of playing a pari-mutuel wagering game, comprising:
purchasing at least one share in favor of a particular outcome of a plurality of potential outcomes for an event at a share price, funds for each share purchased being placed in a pari-mutuel wagering pool; and
if the particular outcome in favor of which the at least one share was purchased is a winning outcome, receiving an appropriate payout.

26. The method of claim 25, wherein receiving an appropriate payout comprises:
receiving funds equivalent to the share price at which each share in favor of the winning outcome was purchased; and
receiving a dividend for each share purchased in favor of the winning outcome.

APPENDIX B

No evidence appendix is included herewith

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APPENDIX C

No related proceedings appendix is included herewith

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